

MEDIATION REFRESHER TRAINING

MEDIATION TECHNIQUES OVERVIEW

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GOAL OF CURRENT EEOC COMPLAINT PROCESSING REGULATIONS

- ◆ TO PROMOTE GREATER ADMINISTRATIVE FAIRNESS IN THE INVESTIGATION AND CONSIDERATION OF FEDERAL SECTOR EEO COMPLAINTS BY CREATING A PROCESS THAT IS QUICKER AND MORE EFFICIENT.



AVOIDING AND RESOLVING CONFLICT

- ◆ First priority to avoid potential claims and litigation by emphasizing proper conduct in policies and training and avoiding even the appearance of impropriety.
- ◆ However, mistakes will be made. Comments will be misinterpreted. Feelings will be hurt and parties will turn to lawyers to redress actual or perceived wrongs.



HOW ADR CAN HELP

- ◆ **ADR SYSTEMS RELY ON PRIVATE MECHANISMS, RATHER THAN THE COURTS, TO RESOLVE A DISPUTE.**
- ◆ **ADR ENCOMPASSES WIDE RANGE OF PROCESSES WHICH ALLOW PARTIES TO TAILOR PROCESS TO CIRCUMSTANCES.**
- ◆ **CAN RESOLVE PROBLEMS WITHOUT "MAKING A FEDERAL CASE" OUT OF EVERY DISAGREEMENT.**



Types of ADR

- * **INFORMAL DISCUSSIONS**
- * **FACILITATION**
- * **FACT FINDING**
- * **NEUTRAL EVALUATION**
- * **MEDIATION (ASSISTED NEGOTIATION)**
- * **NON BINDING ARBITRATION**
- * **MINITRIAL**
- * **BINDING ARBITRATION**



How Does ADR Work, and Why?

- ◆ **OPTIONS LIKE MEDIATION CREATE A SAFE ENVIRONMENT FOR OPEN AND DIRECT COMMUNICATION**
- ◆ **PROVIDE MORE FLEXIBILITY AND CONTROL FOR PARTIES**
- ◆ **HELP PRESERVE RELATIONSHIPS**
- ◆ **PROMOTE PARTNERING**
- ◆ **ENCOURAGE CREATIVE SOLUTIONS BASED ON INTERESTS VERSUS POSITIONS**



How Does ADR Work, and Why

◆ *WHAT'S WRONG WITH TRADITIONAL SYSTEMS FOR RESOLVING CONFLICTS*

- ★ INHERENTLY ADVERSARIAL

- ★ LOSS OF CONTROL ONCE ACTION INITIATED

- ★ TRAUMATIC EXPERIENCE FOR MOST

- ★ DAMAGE OR DESTROY RELATIONSHIPS

- ★ COSTLY

- ★ BURDENSOME

- ★ LENGTHY



OTHER CONSIDERATIONS

- ◆ **LACK OF PREDICTABILITY OF JUDGE OR JURY DECISION**
- ◆ **OPPORTUNITY FOR BOTH SIDES TO BE HEARD, PARTICULARLY AGGRIEVED**
- ◆ **MAY OPEN LINES OF COMMUNICATION EVEN IF SETTLEMENT IS NOT ACHIEVED**



OTHER CONSIDERATIONS

- ◆ **LESSON LEARNED MAY KEEP PARTIES FROM MAKING SAME MISTAKE**
- ◆ **LITIGATION OFTEN HAS DOWN SIDES FOR BOTH PARTIES**
- ◆ **COMPLICATED RULES MAY PREVENT PARTIES FROM REALLY GETTING AT TRUTH OR BEING ABLE TO EFFECTIVELY TELL THEIR STORY**



GOAL OF ADR SYSTEMS

- ◆ RESOLUTION OF DISPUTES
 - ◆ FAIR
 - ◆ EFFICIENT
 - ◆ EFFECTIVE
 - ◆ TIMELY
- ◆ APPLY MOST SIMPLE AND LEAST INTRUSIVE METHOD POSSIBLE UNDER THE CIRCUMSTANCES



LESSONS LEARNED

- ◆ **ADR WORKS**
- ◆ **NOT SUITABLE FOR ALL CASES**
- ◆ **CAN BE A VALUABLE TOOL EVEN WHEN IT FAILS TO COMPLETELY RESOLVE ISSUES**
- ◆ **EFFECTIVE COMMUNICATION KEY**
- ◆ **TRUST IS IMPORTANT**



LESSONS LEARNED

- ◆ **PERFORM REALISTIC LITIGATION RISK ASSESSMENT**
- ◆ **KEEP AN OPEN MIND**
- ◆ **BE CREATIVE**
- ◆ **WATCH THE EGO**



GOAL OF TRADITIONAL MEDIATION PROCESS

- ◆ TO FACILITATE OPEN DISCUSSIONS BETWEEN THE DISPUTANTS AND ASSIST THEM IN REACHING A MUTUALLY AGREEABLE RESOLUTION.



MEDIATION IN THE WORKPLACE

- ◆ CHOOSING MEDIATION TO RESOLVE EMPLOYMENT DISCRIMINATION OR WORKPLACE DISPUTES PROMOTES A BETTER WORK ENVIRONMENT, REDUCES COSTS AND WORKS FOR THE EMPLOYER *AND* THE EMPLOYEE.



BENEFITS OF MEDIATION

- ◆ **EFFECTIVENESS:** Nationally, in 75% to 90% of mediation cases mediated in a controlled dispute resolution situation, the parties reach an agreement.
- ◆ **SATISFACTION:** Participants report a high degree of satisfaction with the process and the results. The parties maintain control over the outcome.



COMMUNICATION

- ◆ **MEDIATION PROVIDES A UNIQUE OPPORTUNITY FOR THE PARTIES TO COMMUNICATE DIRECTLY WITH EACH OTHER.**
- ◆ **THIS OPPORTUNITY IS NOT GENERALLY AVAILABLE IN OTHER FORUMS SUCH AS COURTS.**



MEDIATION PROCESS

- ◆ **UNDERSTANDABILITY:** Mediators are trained to set the participants at ease, to explain the mediation process, and the mediator's role in the process.
- ◆ **PRIVACY:** With few exceptions, mediation sessions are held in private so that the parties need not air their grievance or complaint in a public setting.



ROLE OF MEDIATOR

- ◆ Serves as neutral facilitator.
- ◆ Builds trust.
- ◆ Summarizes, restates, and prioritizes issues in a non-judgmental manner.
- ◆ Assists in the generation or clarification of options.
- ◆ Evaluates options and possible consequences.
- ◆ Enforces the ground rules.
- ◆ Identifies areas of mutual interest.



MEDIATION PROCESS

- ◆ Preliminary Arrangements
- ◆ Introductory Statement
- ◆ Initial Statements
- ◆ Two-Way Exchange
- ◆ Issues and Problem Clarification
- ◆ Generating Options
- ◆ Agreement Writing
- ◆ Closure



MEDIATION PROCESS

Preliminary Arrangements

- ◆ Upon receipt of the case to be mediated, the mediator considers the type of dispute, the relationship of the parties, and who should be included in the mediation.
- ◆ Informs the parties that they are participating in a structured process.
- ◆ Coordinates the times, dates, locations, and seating arrangements.



MEDIATION PROCESS

Introduction

- ◆ ESTABLISHES THE GROUND RULES.
- ◆ ENCOURAGES NON-ADVERSARIAL APPROACH.
- ◆ EXPLAINS ROLE AS NEUTRAL, NOT A JUDGE.
- ◆ EXPLAINS THAT PARTIES RETAIN LEGAL RIGHTS.
- ◆ PLACES EMPHASIS ON THE PRESENT vs. PAST.
- ◆ EXPLAINS THE MEDIATION PROCESS.
- ◆ EXPLAINS THE USE OF A CAUCUS.
- ◆ EXPLAINS THE IMPORTANCE OF CONFIDENTIALITY.
- ◆ BUILDS TRUST.



MEDIATION PROCESS

Opening Statements

- ◆ Gives each party an opportunity to present their side of the story without interruption.
- ◆ Parties encouraged to listen effectively during each other's statement (possibly for the first time).
- ◆ Mediator treats each party equally.
- ◆ Mediator enforces the “no interruption” rule, and the ground rules in general.



MEDIATION PROCESS

Two Way Exchange

- ◆ Allows the parties to express their feelings and emotions to each other in a productive and positive manner.
- ◆ Allows the parties to ask and answer questions from each other.
- ◆ Fills in information gaps. Gathers data useful to problem resolution.
- ◆ Allows the mediator an opportunity to hear the positions of each party and begin to gain insight into underlying issues.



MEDIATION PROCESS

Exploring issues and clarifying



- ◆ Allows the parties and the mediator to uncover the motivating interests of each position.
- ◆ Helps the parties “frame the issues.”
- ◆ Uncovers “hidden agenda.”
- ◆ Assists the parties and the mediator to identify mutual interests on which the parties can bargain or negotiate.
- ◆ Allows the mediator to confirm the issues.

MEDIATION PROCESS

Exploring Options

- ◆ Allows the parties to explore solutions which are mutually acceptable.
- ◆ Allows the parties to “brainstorm” their own solution rather than by a third party decision maker.
- ◆ Allows the parties to retain control over the situation and fosters a feeling of ownership.
- ◆ Allows the parties to move away from their original positions and focuses on solutions.



DESIGNING SOLUTIONS

- ◆ IDEALLY, THE SOLUTION SHOULD BE THE PARTIES' SOLUTION.
- ◆ TO BE EFFECTIVE IN THE LONGER TERM, RESOLUTIONS SHOULD ADDRESS THE UNDERLYING INTERESTS OF THE PARTIES.
- ◆ REMEMBER, UNDERLYING INTERESTS MAY NOT BE STATED; AT LEAST NOT INITIALLY.



MEDIATION PROCESS

The Caucus

- ◆ The caucus, or individual interview, is an optional technique to obtain information about each party's position and for finding areas of compromise.
- ◆ The basic purpose of the caucus is to encourage more open communication.
- ◆ The caucus can aid in resolving impasses, reducing tension, discussing consequences, and saving face.



MEDIATION PROCESS

Settlement Agreement



- ◆ Success in mediation is sometimes intangible (without a written agreement).
- ◆ However, when a case is in the EEO process a written agreement is usually necessary.
- ◆ Written agreements should be specific: WHO, WHAT, WHEN, WHERE, AND HOW.
- ◆ Reality test the written agreement.
- ◆ Obtain necessary approvals before finalizing.

MEDIATION PROCESS

Closure with Agreement

- ◆ Congratulate the parties for successfully participating in the mediation process and reaching a mutually satisfactory disposition.
- ◆ Promote the mediation process as an alternative dispute resolution technique for future issues.
- ◆ Encourage the parties to research other alternative dispute resolution methods.



MEDIATION PROCESS

Closure without Agreement

- ◆ Compliment the parties for attempting to resolve the dispute through mediation.
- ◆ Discuss any positive or constructive results obtained during the mediation.
- ◆ Double check the parties' understanding of the consequences of not reaching an agreement.



REVIEW OF MEDIATION TECHNIQUES

- **MEDIATORS CAN ASSIST OTHERS IN RESOLVING WORKPLACE CONFLICTS BY:**
 - ◆ **ASKING EFFECTIVE QUESTIONS**
 - ◆ **CLARIFYING INTERESTS**
 - ◆ **AIDING IN THE DEVELOPMENT OF OPTIONS**
 - ◆ **MINIMIZING OR ELIMINATING NON-PRODUCTIVE BEHAVIORS**



REVIEW OF MEDIATION TECHNIQUES

- **GATHERING INFORMATION**
- ◆ Clarifies consequences of no agreement
- ◆ Asks for clarification
- ◆ Asks open-ended questions
- ◆ Summarizes greatest concerns



REVIEW OF MEDIATION TECHNIQUES

■ DEVELOPING ISSUES

- ◆ Asks non-threatening questions
- ◆ Clarifies interests versus positions
- ◆ Asks parties to restate each other's interests



REVIEW OF MEDIATION TECHNIQUES

■ COMMUNICATION TECHNIQUES

- ◆ Listens attentively
- ◆ Maintains eye contact
- ◆ Uses body language
- ◆ Checks for understanding
- ◆ Restates or paraphrases accurately
- ◆ Allows for silence
- ◆ Looks beyond the words
- ◆ Draws the speaker out



REVIEW OF MEDIATION TECHNIQUES

■ COMMUNICATION TECHNIQUES

■ Barriers to Listening - Judging

- ◆ Arguing
- ◆ Analyzing
- ◆ Advising
- ◆ Directing
- ◆ Labeling
- ◆ Moralizing



REVIEW OF MEDIATION TECHNIQUES

■ COMMUNICATION TECHNIQUES

■ Barriers to Listening

- ◆ Minimizing
- ◆ Diverting
- ◆ Logical Arguments
- ◆ Threatening
- ◆ Inappropriate Questioning



REVIEW OF MEDIATION TECHNIQUES

■ NEGOTIATING AND SOLVING PROBLEMS

- ◆ Asks parties to identify criteria to guide resolution
- ◆ Asks parties to create multiple options



REVIEW OF MEDIATION TECHNIQUES

■ INTERVENTION TECHNIQUES

- ◆ Uses clear, assertive language
- ◆ Maintains neutral behaviors
- ◆ Invites equal participation
- ◆ Stops session if process is inappropriate



REVIEW OF MEDIATION TECHNIQUES

- **CLOSING THE SESSION**
- ◆ Checks that all issues are addressed
- ◆ Clarifies degree of resolution
- ◆ Obtains agreement on next steps
- ◆ Acknowledges and thanks parties



REVIEW OF MEDIATION TECHNIQUES

- YOUR ROLE IS TO CREATE OPPORTUNITIES FOR RESOLUTION TO OCCUR
- ULTIMATELY WE HOPE TO ADD MEDIATION TECHNIQUES TO EVERYONE'S TOOLBOX OF SKILLS FOR HELPING TO RESOLVE CONFLICTS



GAINING *BUY IN*

- ◆ IF AGENCY POWER POINTS UNDERSTAND THE BENEFITS OF ADR TECHNIQUES, THEY ARE MORE LIKELY TO *BUY IN* TO THE PROCESS.
- ◆ AT THE VERY LEAST YOU MAY IMPROVE COMMUNICATIONS AND UNDERSTANDING OF UNDERLYING INTERESTS. THIS CAN FACILITATE RESOLUTIONS AND IMPROVE WORKING RELATIONSHIPS.

